

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

ANDREW LOPEZ,	)	CV NO 03-00011 DAE LEK
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JOHN ASHCROFT, in his capacity	)	
as the Attorney General,	)	
	)	
Defendant.	)	
_____	)	

ORDER GRANTING WITHOUT PREJUDICE MOTION TO WITHDRAW  
DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

On January 7, 2003, Plaintiff filed a Complaint against Defendant, alleging discrimination based upon his race and national origin, retaliation for making a discrimination complaint, and that he was subjected to a hostile work environment.

On September 16, 2005, Defendant filed a Motion for Partial Summary Judgment arguing that each of Plaintiff's claims should be dismissed because the actions alleged in paragraphs 11(f)-11(h), 12 and 13 of the Complaint do not rise to the level of adverse employment actions and were not sufficiently severe and pervasive to create a hostile work environment. Thus, Defendant argues, Plaintiff cannot prove a prima facie case of discrimination or

retaliation, or prove his hostile work environment claim. Plaintiff filed an opposition on November 17, 2005. Defendant filed a reply on January 6, 2006.

On January 17, 2006, Defendant filed a Motion for Partial Dismissal arguing that the actions alleged in paragraphs 11(a)-11(e) of the Complaint should be dismissed because they are untimely. At the hearing on the partial summary judgment motion, which was scheduled for today, Plaintiff requested that the Motion for Partial Summary Judgment and the Motion for Partial Dismissal be heard at the same time since Plaintiff argues that his claims cannot be dismissed because some of the actions upon which they are based are timely, and thus this Court can consider the other actions as well in making its determination. Defendant agreed to have the two motions heard at the same time and sought to withdraw its Motion for Partial Summary Judgment without prejudice.

The Court HEREBY grants Defendant's request to withdraw its Motion for Partial Summary Judgment without prejudice. The motion, opposition and reply briefs, that were already filed, shall be re-filed. There shall be no new briefing with respect to the Motion for Partial Summary Judgment. The Motion for Partial Summary Judgment shall be heard at the same date and time as the Motion for Partial Dismissal. The opposition and reply for the Motion for Partial

Dismissal are due as provided by the Federal Rules of Civil Procedure and the Local Rules.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, January 17, 2006.



  
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David Alan Ezra  
United States District Judge

Lopez v. Ashcroft, CV No. 03-00011 DAE-LEK; ORDER GRANTING  
WITHOUT PREJUDICE MOTION TO WITHDRAW DEFENDANT'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT